

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

SUZANNE FELEY,

Plaintiff-Appellee,

v

STATE EMPLOYEES' RETIREMENT SYSTEM,

Defendant-Appellant.

---

UNPUBLISHED

June 22, 1999

No. 205253

Ingham Circuit Court

LC No. 96-083959 AA

Before: Cavanagh, P.J., and MacKenzie and McDonald, JJ.

CAVANAGH, P.J. (*dissenting*).

I respectfully dissent. MCL 38.21; MSA 3.981(21) provides that disability retirement benefits shall be awarded when an employee is "mentally or physically totally incapacitated for the further performance of duty in the service of the state, and that such incapacity will probably be permanent." In the instant case, evidence was presented that plaintiff could work with restrictions. However, evidence was also presented that there are no jobs available within a suitable driving range for plaintiff because of her restrictions. Thus, for all practical purposes, plaintiff is "totally incapacitated for the further performance of duty in the service of the state."

I would affirm the trial court.

/s/ Mark J. Cavanagh